

## **Response to CMS' Questions re. Minnesota's Asset Transfer Waiver Request**

- 1. What positive and/or negative comments has the State received regarding this proposal? How has DHS responded to these comments/concerns? As the comment period for the public notice doesn't close until April 24, 2003, after this date, please provide us with a summary of who commented and what their issues were.**

The State has received approximately 20 comments thus far. Over half have come from attorneys practicing elder law, and these have been negative. Several others have come from advocacy groups, such as the Alzheimer's Association and the MS Society. These comments have been supportive of the general concept of having people pay the costs of their own long-term care when possible, but request that the State assure that vulnerable people are protected. Letters of support have been received from the Chairs of the House and Senate Health and Human Services committees. One of these legislators is a Democrat, the other is a Republican. The State's largest county, Hennepin County, has submitted a letter of support, as well.

- 2. Please provide the status of authorizing legislation for this proposal.**

Authorizing legislation has passed both legislative bodies. These bills will be combined by the Conference Committee into one bill that resolves any differences; both bodies will then pass that bill. The asset transfer changes have bi-partisan support.

- 3. Will all assets be included in the transfer prohibitions? Are there no exceptions?**

Minnesota looks at asset transfers over a \$200 minimum. This is designed to be efficient for the State, as well as to avoid penalizing small gifts or transfers of items with primarily sentimental value. In addition, policy will be developed that will identify which items of personal property will be subject to the transfer prohibition. While not every transfer of personal property and household goods will be reviewed, items that typically have a significant value such as cars, jewelry, sterling silver, art, coin collections or other valuable collections would be considered.

- 4. How will DHS protect vulnerable populations under the demonstration, such as individuals with dementia or others who might be exploited? Does the State have any "hardship" exemptions?**

Minnesota does have a hardship waiver process, as is required by federal law, and is not requesting a waiver of that provision. Current policy permits a county agency to grant a waiver of the transfer penalty if denial of MA will result in an imminent threat to the health and well being of the applicant. A waiver of the penalty will occur if:

A person requires long term care services and;

There are no alternatives for the payment for long term care services and;

The person's health and well being would be in immediate danger if the person lost MA payment for long term care service.

OR

A person was a victim of financial exploitation or has made reasonable efforts to recover the transferred income or resource.

A detailed description of the process is included in the State's Medical Assistance manual, which may be accessed on the web at:

<http://www.dhs.state.mn.us/HealthCare/reportsmanuals/manualcounty/chapter09.htm#0909.31>

Upon receipt of federal approval to apply a penalty to all MA applicants and recipients, this hardship waiver policy  
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will be extended so that it is available to all who are subject to a transfer penalty.

- 5. How does the State enforce current asset transfer penalties under the State Plan? To what extent does the State currently catch Medicaid eligibles who illegally transfer assets? What amount of savings does this provide the State? Does the State have specific expectations relative to the change in behavior anticipated as a result of this demonstration, such as a reduction of illegal transfers, or an increase in Medicaid applications not containing illegal transfers?**

The problem that the State wishes to address with these waiver provisions is not illegal transfers, but rather transfers that are legal under current law, but which result in people with substantial assets transferring those assets in order to qualify for Medical Assistance. Currently, people are able to plan for MA-LTC eligibility by transferring approximately half of their assets and reserving half to cover LTC costs during a period of ineligibility. This practice will stop if the ineligibility period begins at application.

- 6. After the waiver is implemented, will the State need additional FTEs to enforce the new rules? How will the State pay for additional FTEs if needed?**

The State does not anticipate requiring additional FTEs, and may see a slight decline in administrative costs associated with this waiver.

- 7. Does the State plan on promoting LTC insurance as part of the demonstration? If yes, how will the State promote this type of insurance?**

In 1997, the state undertook a study of the impacts of the aging of the baby boom generation. This study, called Project 2030, identified five major themes for a state response to these demographic realities. They included helping boomers prepare for retirement and taking more personal responsibility for their health and long-term care needs, including considering long-term care insurance. Based upon those recommendations, the state prepared a number of publications regarding the need to personally plan for retirement and old age (and consider purchase of long-term care insurance) that are distributed widely and available on the web. Staff of the Minnesota Board on Aging's Senior LinkAge Line and Health Insurance Counseling program have been trained to provide information on long term care insurance and assisting individuals to evaluate and purchase policies. Information on long term care insurance is also contained in the MinnesotaHelp.info web site and at the Minnesota 211 information number. That web page address and phone number, as well as the Senior Linkage Line phone number, are marketed throughout the state as access points for information or assistance with a variety of health and human services needs and financing concerns.

In addition, the Board recently completed a survey of employers in Minnesota to gauge interest in offering employee-paid long-term care insurance as a benefit. The results show that a majority of employers would consider offering this benefit, especially if their employees asked for it. The state will follow up to encourage more employers to offer long-term care insurance. The Board is considering hosting a statewide conference with employer groups to discuss and promote long term care insurance

- 8. Will the State implement a "grandfather clause" or phase in period? Without a phase-in period, we are concerned that individuals who play by the current rules will be unfairly penalized when the waiver is implemented.**

The increase in the look-back period will be phased in beginning on July 1, 2003 by adding one month at a time to the look-back period. This follows the practice established in Transmittal 64 when OBRA 1993 was implemented.

The State intends to apply the other provisions only to improper transfers that take place on or after July 1, 2003. Note that this will be the effective date even if federal approval is received at a later date. This is necessary in order to avoid large-scale transfers during a prolonged approval period.

**9. Please provide more details on your budget neutrality calculations:**

**How the penalty period will be calculated under the proposed changes?**

Current rules will apply to transfers made before July 1, 2003. New rules will apply to transfers made on or after July 1, 2003. If an applicant for long-term care services makes uncompensated transfers only on or after July 1, 2003, the penalty period will start in the first month the person requests and is eligible for long-term care services, for the number of months obtained by dividing the total amount transferred by the new divisor. A penalty period established under pre-waiver rules (based on transfers made before July 1, 2003) that runs out before the time of an application for long-term care services will have no effect on long-term care eligibility if no other uncompensated transfers were made on or after July 1, 2003.

If a penalty period under pre-waiver rules is still running at the time of an application for long-term care services, that period will be combined with an additional penalty period calculated for any uncompensated transfers occurring on or after July 1, 2003. The penalty period for such transfers will start after the end of the penalty period established under pre-waiver rules. This procedure (of stacking a penalty period determined under pre-existing rules on top of a penalty period determined under new rules) follows that set forth in Transmittal 64.

For the non-LTC MA population, penalties will be imposed when a transfer is made on or after 7/1/03. The penalty period will begin when a person applies for MA and is otherwise eligible or, for MA recipients, when the agency finds out about the transfer and can give adequate notice.

**How the DHS long-term care study calculated the number of probable illegal transfer cases (N=627)?**

The population of a one-year cohort of applicants in nursing facilities (3133) is multiplied by 20 percent, the proportion of the applicants projected to have an illegal transfer. Sample data from the long-term care study gives a proportion of 18% of this cohort having illegal transfers. This was adjusted to 20 percent on the assumption that the actual prevalence of illegal transfers was somewhat greater than that found in the study.  $3133 * .20 = 627$ .

**Why the State is using the 40% of the projected charge per day calculation?**

The 40 percent figure was a misstatement -- the correct figure is 60 percent. The budget neutrality numbers included in Section Five of the waiver request are, however, correct. For the average NF recipient, MA pays roughly 80 percent of the monthly NF charges, the remaining 20 percent coming from the recipient's income. The assumption behind the 40 percent figure is that these recipients, having more assets than other NF applicants, also have average monthly income equal to twice the average, so that they would pay 40 percent and Medicaid would pay 60 percent.